

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9089 of 2002

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

CHIRAG CORPORATION

Versus

ARVINDKUMAR TARACHAND

Appearance:

MR DF AMIN for the Petitioner
MR DAXESH T DAVE for the Respondent

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/04/2003

ORAL JUDGEMENT

Heard the learned advocates.

RULE returnable today. Mr.Dave waives service of rule on behalf of the respondent.

The petitioner, the defendant in Summary Suit No.119/2001, challenges the order of conditional leave to defend made below Application Ex.8 by the learned City Civil Judge on 18th July, 2002. Under the impugned order, the petitioner has been granted leave to defend on condition that he deposits 50% of the suit amount.

On 13th September, 2002, the learned advocate Mr.D.F.Amin appearing for the petitioner made a statement that the petitioner shall deposit a sum of Rs.1,00,000=00. On such statement being made, this Court (Coram: Jayant Patel, J.) directed the petitioner to deposit a sum of Rs.25,000=00 within two weeks from the date of the order. Mr.Amin states that the petitioner has deposited the aforesaid sum of Rs.25,000=00 within two weeks as stipulated. The petitioner has also deposited the remaining sum of Rs.75,000=00 in the Court below.

Mr.Amin has submitted that the plaintiff - respondent is doing the business of money lending. However, no case is urged that the plaintiff holds a valid money lending licence. In absence of the valid money lending licence, the suit is liable to be dismissed. Hence, the petitioner shall be given an unconditional leave to defend.

The learned advocate Mr.Daxesh Dave has submitted that whether the plaintiff possesses a valid money lending licence or not, is a matter of decision by the Court below at the end of the trial. He, however, admits that the plaintiff has not made out a case that the plaintiff holds a valid money lending licence.

In above view of the matter, the petition is partly allowed. The impugned order dated 18th July, 2002 made by the Court below is modified to the extent that the petitioner be granted leave to defend on condition that it deposits a sum of Rs.1,00,000=00 in the Court below. Rule is made absolute to the above extent. The parties shall bear their own costs.

(Ms. R.M. Doshit, J.)

/sakka